

(1) Such individual to perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions, or

(2) Such entity to:

(i) Make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions, or

(ii) provide any personnel for the performance or assistance in the performance of any sterilization procedure or abortion if the performance or assistance in the performance of such procedure or abortion by such personnel would be contrary to the religious beliefs or moral convictions of such personnel.

§ 88.5 Written certification of compliance.

(a) *Certification Requirement.* Except as provided in paragraph (e) of this section, recipients shall include the written certifications as set forth in paragraph (c)(4) of this section in the application for the grant, cooperative agreement, contract, grant under a contract, memorandum of understanding or other funding or employment instrument or contract, as applicable. Except as provided in paragraph (e) of this section, sub-recipients must provide the Certification of Compliance as set out in paragraph (d)(3) of this section, submitted as part of the sub-recipient's original agreement with the recipient in the execution of its grant, cooperative agreement, contract, grant under a contract, memorandum of understanding or other funding instrument or contract, or in a separate writing, signed by the sub-recipient's officer or other person authorized to bind the sub-recipient. All certifications shall be addressed directly to the Department; recipients are required to submit their certifications directly to the Department. Recipients and sub-recipients shall be required to be in full compliance with all applicable certification requirements by no later than the beginning of the federal fiscal year fol-

lowing the effective date of this regulation.

(b) *Notification of Certification Requirement.* The Department shall notify recipients of funding of the certification requirement at the time of award through the Request for Proposal, Request for Agreement, Provider Agreement, contract, guidance, or other public announcement of the availability of funding. Recipients shall not construe anything in this paragraph to mean that an entity or organization is in any way exempt from providing the certification in the event the Department should fail to provide notification.

(c) *Certification by recipients.* (1) Except as provided in paragraph (e) of this section, all recipients through any instrument must provide the Certification of Compliance as set out in paragraph (c)(4) of this section, submitted as part of the recipient's application for the grant, cooperative agreement, contract, grant under a contract, memorandum of understanding or other funding instrument or contract or in a separate writing signed by the recipients' officer or other person authorized to bind the recipient.

(2) Recipients must file with the Department a renewed certification upon any renewal, extension, amendment, or modification of the grant, cooperative agreement, contract, grant under a contract, memorandum of understanding or other funding or employment instrument or contract that extends the term of such instrument or adds additional funds to it. Recipients that are already recipients as of the effective date of this regulation must file a certification upon any extension, amendment, or modification of the grant, cooperative agreement, contract, grant under a contract, memorandum of understanding or other funding instrument or contract that extends the term of such instrument or adds additional funds to it.

(3) Recipients shall require certifications and re-certifications by all sub-recipients that receive funding through their association with the recipient. Recipients shall require these certifications and re-certifications as often as recipients are required to sign or amend the instrument, for as long as the relationship between the recipient

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and the sub-recipient lasts. Recipients shall collect and maintain sub-recipient certifications for as long as the relationship between the recipient and the sub-recipient lasts, and for a reasonable time after the relationship ends, for the purpose of investigations, litigation, or other purposes.

(4) Except as provided in paragraph (e) of this section, all recipients shall provide the following certification:

“As the duly authorized representative of the recipient I certify that the recipient of funds made available through this [instrument] will not [check all that are appropriate]:

— [if recipient is a state or local government receiving federal funds appropriated through the appropriations act for the U.S. Department of Health and Human Services] subject any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for, abortion.

— [if recipient is an entity receiving federal funds appropriated through the appropriations act for the U.S. Department of Health and Human Services to implement any part of any federal program] subject any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortion as part of the federal program for which it receives funding.

— [if recipient is a State or local government that receives federal financial assistance]

(1) Subject any institutional or individual health care entity to discrimination for refusing: (a) To undergo training in the performance of abortions, or to require, provide, refer for, or make arrangements for training in the performance of abortions; (b) to perform, refer for, or make other arrangements for, abortions; or (c) to refer for abortions.

(2) subject any institutional or individual health care entity to discrimination for attending or having attended a post-graduate physician training program, or any other program of training in the health professions, that does not or did not require attendees to perform induced abortions or require, provide, or refer for training in the performance of induced abortions, or make arrangements for the provision of such training.

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(3) for the purposes of granting a legal status to a health care entity (including a license or certificate), or providing such entity with financial assistance, services or benefits, fail to deem accredited any postgraduate physician training program that would be accredited but for the accrediting agency's reliance upon an accreditation standard or standards that require an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether such standard provides exceptions or exemptions.

— [if recipient is a State or local government, any part of any State or local government, or any other public entity] on the basis that the individual or entity has received a grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Assistance and Bill of Rights Act of 2000, require such individual to perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions, or such entity to make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions, or provide any personnel for the performance or assistance in the performance of any sterilization procedure or abortion if the performance or assistance in the performance of such procedure or abortion by such personnel would be contrary to the religious beliefs or moral convictions of such personnel.

— [if recipient is any entity (including a state or local government) that receives a grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Assistance and Bill of Rights Act of 2000] discriminate against any physician or other health care professional in the employment, promotion, termination, or extension of staff or other privileges because he performed or assisted in the performance, or refused to perform or assist in the performance of a lawful sterilization procedure or abortion on the grounds that doing so would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs

or moral convictions concerning abortions or sterilization procedures themselves.

[if recipient is any entity (including a state or local government) that receives a grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Assistance and Bill of Rights Act of 2000 that is an educational institution, teaching hospital, or program for the training of health care professionals or health care workers] discriminate against or deny admission to any applicant for training or study because of reluctance or willingness to counsel, suggest, recommend, assist, or in any way participate in the performance of abortions or sterilizations contrary to or consistent with the applicant's religious beliefs or moral convictions.

[if recipient is an entity, including a State or local government, that carries out any part of any health service program or research activity funded in whole or in part under a program administered by the U.S. Secretary of Health and Human Services] require any individual to perform or assist in the performance of any part of a health service program or research activity funded by the U.S. Department of Health and Human Services if such service or activity would be contrary to his religious beliefs or moral convictions.

[if recipient is an entity that receives grants or contracts for biomedical or behavioral research under any program administered by the U.S. Secretary of Health and Human Services] discriminate in the employment, promotion, termination, or the extension of staff or other privileges to any physician or other health care personnel because he performed, assisted in the performance, refused to perform, or refused to assist in the performance of any lawful health service or research activity on the grounds that his performance or assistance in performance of such service or activity would be contrary to his religious beliefs or moral convictions, or because of the religious beliefs or moral convictions concerning such activity themselves."

[All recipients] I further certify that the recipient acknowledges that any violation of these certifications may result in termination by the Department of any grant, cooperative agreement, contract, grant under a contract, memorandum of understanding or other funding or employment instrument or contract prior to the end of its term and recovery of appropriated funds expended prior to termination, and may be used as such at the Department's discretion. I further certify that, except as provided in 45 CFR 88.5(e), the recipient will include this certification requirement in any [instrument] to a sub-recipient of funds made available under this instru-

ment, and will require, except as provided in 45 CFR 88.5(e), such sub-recipient to provide the same certification that the recipient organization or entity provided. I further certify the recipient organization will collect and maintain sub-recipient certifications for as long as the relationship between the recipient and the sub-recipient lasts, and for a reasonable time after the relationship ends, for the purpose of investigations, litigation, or other purposes."

(d) *Certification by Sub-recipients.* (1) Except as provided in paragraph (e) of this section, organizations or entities that are sub-recipients of the organization or entity providing the initial Certification of Compliance must submit to the recipient for maintenance by the recipient through which the sub-recipient receives Department funds Certification of Compliance as set out in paragraph (d)(3) of this section, as part of the grant, cooperative agreement, contract, grant under a contract, memorandum of understanding or other funding instrument or contract between the recipient and the sub-recipient or in a separate writing signed by the sub-recipients' officer or other person authorized to bind the sub-recipient.

(2) Except as provided in paragraph (e) of this section, sub-recipients of funds shall renew certification to the recipient through which it receives Department funds upon any renewal, extension, amendment, or modification of the grant, cooperative agreement, contract, grant under a contract, memorandum of understanding or other funding or employment instrument or contract that extends the term of such instrument or adds additional funds to it. Sub-recipients shall submit such renewals to the recipient entities through which they receive Department funding. Entities that are already sub-recipients as of the effective date of this regulation must certify upon any extension, amendment, or modification of the grant, cooperative agreement, contract, grant under a contract, memorandum of understanding or other funding instrument or contract that extends the term of such instrument or adds additional funds to it, and shall submit such certifications to the recipient entity through which they receive Department funding.

(3) Except as provided in paragraph (e) of this section, all sub-recipients of Department funds shall provide the following certification:

“As the duly authorized representative of the sub-recipient I certify that the sub-recipient of funds made available through this [instrument] will not [check all that are appropriate]:

— [if sub-recipient is a State or local government receiving federal funds appropriated through the appropriations act for the U.S. Department of Health and Human Services] subject any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for, abortion.

— [if sub-recipient is an entity receiving federal funds appropriated through the appropriations act for the U.S. Department of Health and Human Services to implement any part of any federal program] subject any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortion as part of the federal program for which it receives funding.

— [if sub-recipient is a State or local government that receives federal financial assistance]

(1) Subject any institutional or individual health care entity to discrimination for refusing: (a) To undergo training in the performance of abortions, or to require, provide, refer for, or make arrangements for training in the performance of abortions; (b) to perform, refer for, or make other arrangements for, abortions; or (c) to refer for abortions.

(2) subject any institutional or individual health care entity to discrimination for attending or having attended a post-graduate physician training program, or any other program of training in the health professions, that does not or did not require attendees to perform induced abortions or require, provide, or refer for training in the performance of induced abortions, or make arrangements for the provision of such training.

(3) for the purposes of granting a legal status to a health care entity (including a license or certificate), or providing such entity with financial assistance, services or benefits, the recipient will not fail to deem accredited any postgraduate physician training

program that would be accredited but for the accrediting agency's reliance upon an accreditation standard or standards that require an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether such standard provides exceptions or exemptions.

— [if sub-recipient is a State or local government, any part of any State or local government, or any other public entity] on the basis that the individual or entity has received a grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Assistance and Bill of Rights Act of 2000, require such individual to perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions, or such entity to make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions, or provide any personnel for the performance or assistance in the performance of any sterilization procedure or abortion if the performance or assistance in the performance of such procedure or abortion by such personnel would be contrary to the religious beliefs or moral convictions of such personnel.

— [if sub-recipient is any entity (including a state or local government) that receives these funds through a recipient which received them through a grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Assistance and Bill of Rights Act of 2000] discriminate against any physician or other health care professional in the employment, promotion, termination, or extension of staff or other privileges because he performed or assisted in the performance, or refused to perform or assist in the performance of a lawful sterilization procedure or abortion on the grounds that doing so would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions concerning abortions or sterilization procedures themselves.

— [if sub-recipient is any entity (including a State or local government) that receives these funds through a recipient which received them through a grant, contract, loan, or loan guarantee under the Public

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Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Assistance and Bill of Rights Act of 2000 that is an educational institution, teaching hospital, or program for the training of health care professionals or health care workers] discriminate against or deny admission to any applicant for training or study because of reluctance or willingness to counsel, suggest, recommend, assist, or in any way participate in the performance of abortions or sterilizations contrary to or consistent with the applicant's religious beliefs or moral convictions.

[If sub-recipient is an entity (including a State or local government) that carries out any part of any health service program or research activity funded in whole or in part under a program administered by the U.S. Secretary of Health and Human Services] require any individual to perform or assist in the performance of any part of a health service program or research activity funded by the U.S. Department of Health & Human Services if such service or activity would be contrary to his religious beliefs or moral convictions.

[If sub-recipient is an entity that these funds through a recipient which received them through receives grants or contracts for biomedical or behavioral research under any program administered by the U.S. Secretary of Health and Human Services] discriminate in the employment, promotion, termination, or the extension of staff or other privileges to any physician or other health care personnel because he performed, assisted in the performance, refused to perform, or refused to assist in the performance of any lawful health service or research activity on the grounds that his performance or assistance in performance of such service or activity would be contrary to his religious beliefs or moral convictions, or because of the religious beliefs or moral convictions concerning such activity themselves."

[All sub-recipients] I further certify that the sub-recipient acknowledges that these certifications by the sub-recipient of funds are certifications made directly to the Department and that any violation of these certifications may result in termination by the Department of the recipient's grant, cooperative agreement, contract, grant under a contract, memorandum of understanding or other funding or employment instrument or contract prior to the end of its term and recovery of appropriated funds expended prior to termination, and may be used as such at the Department's discretion. I further certify that the sub-recipient will submit all certifications to the recipient entity through which it received Department funds."

(e) *Exceptions.* Provided that such individuals or organizations are not recipients or sub-recipients of Department funds through another instrument, program, or mechanism, other than those set forth in paragraph (e)(1) through (e)(6) of this section, the following individuals or organizations shall not be required to comply with the written certification requirements set forth in this section:

(1) A physician, as defined in 42 U.S.C. 1395(r), physician office, or other health care practitioner participating in Part B of the Medicare program;

(2) A physician, as defined in 42 U.S.C. 1395(r), physician office, or other health care practitioner which participates in Part C of the Medicare program, when such individuals or organizations are sub-recipients of Department funds through a Medicare Advantage plan;

(3) A sub-recipient of Department funds through a State Medicaid program;

(4) A recipient or sub-recipient of Department funds awarded under certain grant programs currently administered by the Administration for Children and Families, whose purpose is either solely financial assistance unrelated to health care or which is otherwise unrelated to health care provision, and which, in addition, does not involve—

(i) Medical or behavioral research;

(ii) The involvement of health care providers;

(iii) Any significant likelihood of referral for the provision of health care;

(5) A recipient or sub-recipient of Department funds awarded under certain grant programs currently administered by the Administration on Aging, whose purpose is either solely financial assistance unrelated to health care or which is otherwise unrelated to health care provision, and which, in addition, does not involve—

(i) Medical or behavioral research;

(ii) The involvement of health care providers;

(iii) Any significant likelihood of referral for the provision of health care; and

(6) Indian Tribes and Tribal Organizations when contracting with the Indian Health Service under the Indian Self-

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Determination and Education Assistance Act.

§ 88.6 Complaint handling and investigating.

The Office for Civil Rights (OCR) of the Department of Health and Human Services has been designated to receive complaints of discrimination and coercion based on the health care conscience protection statutes and this regulation. OCR will coordinate handling of complaints with the staff of the Departmental programs from which the entity, with respect to which a complaint has been filed, receives funding (i.e., Department funding component).

PART 89—ORGANIZATIONAL INTEGRITY OF ENTITIES IMPLEMENTING PROGRAMS AND ACTIVITIES UNDER THE LEADERSHIP ACT

Sec.

89.1 Applicability and requirements.

89.2 Definitions.

89.3 Organizational integrity of recipients.

AUTHORITY: Section 301(f) of the Leadership Act, Pub. L. 108-25, as amended (22 U.S.C. 7631(f)) and 5 U.S.C. 301.

SOURCE: 75 FR 18763, Apr. 13, 2010 unless otherwise noted.

§ 89.1 Applicability and requirements.

(a) This regulation applies to all recipients unless they are exempted from the policy requirement by the Leadership Act or other statute.

(b) The Department of Health and Human Services (HHS) components shall include in the public announcement of the availability of the grant, cooperative agreement, contract, or other funding instrument involving Leadership Act HIV/AIDS funds the requirement that recipients agree that they are opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men, and children. This requirement shall also be included in the award documents for any grant, cooperative agreement or other funding instrument involving Leadership Act HIV/AIDS funds entered into with the recipient.

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§ 89.2 Definitions.

For the purposes of this part:

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Leadership Act means the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, Public Law 108-25, as amended (22 U.S.C. 7601-7682).

Prostitution means procuring or providing any commercial sex act.

Recipients are contractors, grantees, applicants or awardees who receive Leadership Act funds for HIV/AIDS programs directly or indirectly from HHS.

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

§ 89.3 Organizational integrity of recipients.

A recipient must have objective integrity and independence from any affiliated organization that engages in activities inconsistent with the recipient's opposition to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men and children ("restricted activities"). A recipient will be found to have objective integrity and independence from such an organization if:

(a) The affiliated organization receives no transfer of Leadership Act HIV/AIDS funds, and Leadership Act HIV/AIDS funds do not subsidize restricted activities; and

(b) The recipient is, to the extent practicable in the circumstances, separate from the affiliated organization. Mere bookkeeping separation of Leadership Act HIV/AIDS funds from other funds is not sufficient. HHS will determine, on a case-by-case basis and based on the totality of the facts, whether sufficient separation exists. The presence or absence of any one or more factors relating to legal, physical, and financial separation will not be determinative. Factors relevant to this determination shall include, but not be limited to, the following:

(1) Whether the organization is a legally separate entity;